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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHRISTOPHER HERNANDEZ,
Plaintiff,

v.
CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

Case No. CV 15-01393-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Christopher Hernandez (“Plaintiff”) challenges the Commissioner’s denial of his application for supplemental security income (“SSI”). For the reasons set forth below, the decision of the Commissioner is AFFIRMED.

II. PROCEEDINGS BELOW

On January 31, 2012, Plaintiff protectively filed an application for SSI alleging disability beginning January 7, 2010. (Administrative Record (“AR”) 148-56). His application was denied initially on June 22, 2012, and on reconsideration on November 5, 2012. (AR 51-68.) On December 3, 2012, Plaintiff filed a written request for hearing—and a hearing was held on July 12, 2013. (AR 24-50, 86-95.)

1 Represented by counsel, Plaintiff appeared and testified at the hearing. (AR 26-40.)
2 A vocational expert also appeared and testified at the hearing. (AR 42-45.)

3 On December 6, 2013, the Administrative Law Judge (“ALJ”) concluded that
4 Plaintiff had not been under a disability, as it is defined in the Social Security Act,¹
5 since the date his SSI application was filed. (AR 20.) The ALJ’s decision became
6 the final decision of the Commissioner when the Appeals Council denied Plaintiff’s
7 request for review. (AR 1-6.) On July 13, 2015, Plaintiff filed his complaint in this
8 court challenging the final decision of the Commissioner. (Dkt. No. 1.)

9 The ALJ followed a five-step sequential evaluation process to assess whether
10 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,
11 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged
12 in any substantial gainful activity since the application date. (AR 15.) At **step two**,
13 the ALJ found that Plaintiff had the following severe impairments: cardiomegaly,
14 congestive heart failure, hypertension, and morbid obesity. (*Id.*) At **step three**, the
15 ALJ found that Plaintiff did not have an impairment or combination of impairments
16 “that meets or medically equals the severity of one of the listed impairments in 20
17 CFR Part 404, Subpart P, Appendix 1.” (*Id.*)

18 Before proceeding to step four, the ALJ found that Plaintiff has the residual
19 functional capacity (“RFC”) to:

20 [P]erform sedentary work ... except he is limited to sitting about six
21 hours of an eight-hour workday and standing and/or walking for two
22 hours out of an eight-hour workday provided he does not stand for
23 more than ten minutes at one time or walk more than approximately
24 100 feet at one time. He is limited to no more than occasional
25 stooping, kneeling, crouching, crawling, balancing and climbing of
ramps and stairs while being completely restricted from climbing

26 ¹ Persons are “disabled” for purposes of receiving Social Security benefits if they
27 are unable to engage in any substantial gainful activity owing to a physical or
28 mental impairment expected to result in death, or which has lasted or is expected to
last for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

1 ladders, ropes or scaffolds. Lastly, he is to avoid concentrated
 2 exposure to extreme cold or heat, workplace hazards, and pulmonary
 3 irritants.

4 (AR 16.)

5 At **step four**, the ALJ found that Plaintiff had no past relevant work. (AR
 6 19.) At **step five**, based on Plaintiff's age, education, work experience, RFC, and
 7 the testimony of the vocational expert, the ALJ found that there are jobs existing in
 8 significant numbers in the national economy that Plaintiff is able to perform. (AR
 9 19-20.) Accordingly, the ALJ found that Plaintiff was not disabled. (AR 20.)

10 **III. STANDARD OF REVIEW**

11 Under 42 U.S.C. § 405(g), a district court may review the Commissioner's
 12 decision to deny benefits. A court must affirm an ALJ's findings of fact if they are
 13 supported by substantial evidence, and if the proper legal standards were applied.
 14 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). "'Substantial evidence'
 15 means more than a mere scintilla, but less than a preponderance; it is such relevant
 16 evidence as a reasonable person might accept as adequate to support a conclusion."
 17 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*
 18 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial
 19 evidence requirement "by setting out a detailed and thorough summary of the facts
 20 and conflicting clinical evidence, stating his interpretation thereof, and making
 21 findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

22 "[T]he Commissioner's decision cannot be affirmed simply by isolating a
 23 specific quantum of supporting evidence. Rather, a court must consider the record
 24 as a whole, weighing both evidence that supports and evidence that detracts from
 25 the Secretary's conclusion." *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.
 26 2001) (citations and internal quotations omitted). "'Where evidence is susceptible
 27 to more than one rational interpretation,' the ALJ's decision should be upheld."
 28 *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing *Burch v.*

1 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see also Robbins*, 466 F.3d at 882
 2 (“If the evidence can support either affirming or reversing the ALJ's conclusion, we
 3 may not substitute our judgment for that of the ALJ.”). The Court may review only
 4 “the reasons provided by the ALJ in the disability determination and may not affirm
 5 the ALJ on a ground upon which he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630
 6 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)).

7 **IV. DISCUSSION**

8 Plaintiff argues that the ALJ did not: (1) properly assess his credibility; or (2)
 9 properly develop and consider the vocational evidence and issues at step five. (*See*
 10 Plaintiff’s Memorandum in Support of Complaint (“Pl. Memo.”) at 3-11.) In turn,
 11 the Commissioner argues: (1) that the ALJ did, in fact, properly assess Plaintiff’s
 12 credibility; and (2) that substantial evidence supported the ALJ’s fifth step findings.
 13 (*See* Memorandum in Support of Defendant’s Answer (“Def. Memo.”) at 3-10.)

14 **A. The ALJ Properly Assessed Plaintiff’s Credibility**

15 Plaintiff contends that the ALJ’s credibility analysis and his consideration of
 16 Plaintiff’s subjective complaints were improper and constitute reversible error. (Pl.
 17 Memo. at 8.) For the reasons set forth below, the Court disagrees.

18 ***1. Plaintiff’s Hearing Testimony***

19 At the administrative hearing, Plaintiff testified that he was born in 1984,
 20 attended school in Mexico through the sixth grade,² and did not have a GED. (AR
 21 30.) Plaintiff’s only income over the prior 15-year period was \$6,000 in 2003 when
 22 he had a part-time job working at a cemetery for nine months. (AR 31-32.)³

23 ² When Plaintiff was asked how far he had gotten in school, he said: “Like into
 24 seventh grade[.]” (AR 30.) Later, however, the ALJ and vocational expert found
 25 that Plaintiff had a “marginal” education (AR 41-42), which is generally considered
 26 to be formal schooling at a 6th grade level or less. *See* 20 C.F.R. § 416.964(b)(2).

27 ³ The ALJ and Plaintiff’s attorney agreed that it was “close” whether Plaintiff’s past
 28 employment constituted substantial gainful activity, but the ALJ ultimately decided
 to “rule in [Plaintiff’s] favor on that issue” and found that “there’s no past relevant
 work for us to be concerned with.” (AR 32-33.)

1 Plaintiff testified that he had been diagnosed with obesity, and as having high
2 blood pressure, cardiomegaly, congestive heart failure, and edema. (AR 33-34.)
3 He denied any mental or emotional issues. (AR 34.) Plaintiff testified that he took
4 two medications to treat his high blood pressure (Losartan and Metoprolol) and one
5 to treat edema (Lasix)—and said the medications did not cause side effects. (AR
6 37.)

7 Plaintiff testified that he could lift and/or carry 20 pounds, sit for two hours
8 before having to get up, stand for 10 minutes before having to sit down, and walk
9 50 to 100 feet before having to rest. (AR 35-36.) He identified shortness of breath
10 as a significant problem, brought on by activities such as bending over or walking,
11 and also stated that when he stands for too long, his knees and chest hurt, he
12 experiences shortness of breath, and his “neck ... feels really stiff.” (AR 36.)

13 Plaintiff also testified that his edema,⁴ which for him manifests as swelling
14 below his knees, is a daily problem that forces him to elevate his feet above heart
15 level for one hour every two hours four or five times each day in order to relieve
16 swelling and numbness. (AR 37-39.) Plaintiff confirmed that he could sit for two
17 hours at a time, but then added: “like I said ..., it’s going to affect my legs.” (AR
18 39.)

19 2. *Applicable Legal Standards*

20 “In assessing the credibility of a claimant's testimony regarding subjective
21 pain or the intensity of symptoms, the ALJ engages in a two-step analysis.” *Molina*
22 *v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing *Vasquez v. Astrue*, 572, F.3d
23 586, 591 (9th Cir. 2009)). “First, the ALJ must determine whether the claimant has
24 presented objective medical evidence of an underlying impairment which could
25 reasonably be expected to produce the pain or other symptoms alleged.” *Treichler*

26 ⁴ “Edema means swelling caused by fluid in your body’s tissues. It usually occurs
27 in the feet, ankles and legs, but it can involve your entire body.” National Institute
28 of Health, “Edema,” *available at* <https://www.nlm.nih.gov/medlineplus/edema.html>
(last visited April 18, 2016).

1 *v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (2014) (quoting *Lingenfelter*,
 2 504 F.3d at 1036) (internal quotation marks omitted). If so, and if the ALJ does not
 3 find evidence of malingering, the ALJ must provide specific, clear and convincing
 4 reasons for rejecting a claimant’s testimony regarding the severity of his symptoms.
 5 *Id.* The ALJ must identify what testimony was found not credible and explain what
 6 evidence undermines that testimony. *Holohan v. Massanari*, 246 F.3d 1195, 1208
 7 (9th Cir. 2001). “General findings are insufficient.” *Lester*, 81 F.3d at 834.

8 **3. Discussion**

9 Plaintiff’s credibility argument hinges on a single testimonial allegation—his
 10 claim that he must frequently elevate his legs to relieve edema-induced numbness,
 11 swelling, and pain. Because the inclusion of a leg-elevation requirement in the
 12 RFC adopted by the ALJ would likely lead to a disability finding,⁵ Plaintiff
 13 contends that ALJ erred by finding that his “statements concerning the intensity,
 14 persistence and limiting effects of [his] symptoms” were “not entirely credible”
 15 (AR 17); accepting his testimony regarding his limited ability to stand and walk
 16 “while simultaneously rejecting [his] testimony . . . that he must elevate his legs
 17 approximately every 2 hours or 4 to 5 times a day.” (Pl. Memo. at 5.)

18 The ALJ explained his decision, in part, as follows:

19 In terms of the claimant’s alleged cardiac condition, hypertension and
 20 morbid obesity, the undersigned finds that the claimant is limited to
 21 sedentary work with some functional restrictions. Specifically, he is
 22 limited to sitting, standing and/or walking for two hours out of an
 23 eight-hour workday provided he does not stand for more than ten
 24 minutes at one time or walk more than approximately 100 feet at one
 time. This limitation is in consideration of his testimony that he has

25 ⁵ In his third hypothetical to the vocational expert, the ALJ added the requirement
 26 that the hypothetical person would need to elevate their legs for 30 minutes every
 27 two hours to the second hypothetical which mirrored the ALJ’s RFC determination.
 28 (AR 40-44.) The ALJ asked the vocational expert if he could identify any jobs that
 a hypothetical person with those limitations could perform. (AR 45.) In response,
 the vocational expert said “[n]o work, Your Honor.” (*Id.*)

1 significant limitations with walking and standing due to difficulty
2 breathing and his weight. ... [¶]

3 ... As for his alleged need to elevate his feet frequently throughout
4 the day there is not medical opinion in support of this claim nor any
5 evidence showing that he needs to elevate his feet throughout the day.
6 As such, the undersigned finds that a sedentary [RFC] determination
7 with the restrictions in standing, walking and sitting per the claimant's
8 testimony, not only adequately considers his physical capacity per the
9 medical records but also generously considers his subjective
10 complaints.

11 (AR 18.)

12 The lack of supporting objective medical evidence cannot form the sole basis
13 for discounting testimony, but it is a factor that the ALJ may consider in making his
14 or her credibility determination. *See Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir.
15 2005). Here, the ALJ identified objective medical evidence supporting Plaintiff's
16 testimony about his standing and walking limitations (*see, e.g.*, AR 17 (noting that,
17 in September 2011, Plaintiff went to the emergency room complaining of breathing
18 issues and weighed 400 pounds), 17 (noting that, in January 2012, Plaintiff went to
19 the emergency room complaining of chest pain and shortness of breath and weighed
20 420 pounds), 18 n.1 ("From the medical evidence, the claimant weighs between 504
21 and 533 pounds, which places him in the third level of extreme obesity.")), but he
22 found no objective medical evidence to support Plaintiff's leg elevation claim. (*Id.*)

23 To rebut that conclusion, Plaintiff cites to emergency room records showing
24 that Plaintiff regularly suffered from edema. (*See* Pl. Memo. at 7-8 (citing AR 204,
25 209-10, 214-15, 305-06, 320-21, 323, 332, 334, 551-52, 597, 616, 622).) However,
26 the fact that Plaintiff suffers from edema—a fact the ALJ did not challenge (*see* AR
27 17 (noting that Plaintiff was found upon examination to have edema on at least two
28 separate occasions))—does not substantiate Plaintiff's testimony that he frequently
needed to elevate his legs. Nor do the records so substantiate Plaintiff's testimony.
Rather, as the Commissioner argues, it appears that Plaintiff's treatment plan

1 consisted primarily of diet and lifestyle modifications, more physical activity, and
 2 diuretic medications. (*See, e.g.*, AR 205, 311-12, 323, 519, 551, 620.) Plaintiff has
 3 not identified any objective medical records in which it was suggested that he
 4 frequently elevate his legs to address his edema symptoms.

5 Accordingly, the Court finds that this reason offered by the ALJ constitutes a
 6 clear and convincing reason that is supported by substantial evidence in the record.

7 Furthermore, “[t]he ALJ may consider whether the medical opinions support
 8 plaintiff’s subjective claims in making a credibility determination.” *Hernandez v.*
 9 *Astrue*, 2010 WL 1498988, at *4 (C.D. Cal. Apr. 12, 2010) (citing *Burch*, 400 F.3d
 10 at 680). At Plaintiff’s hearing, the ALJ asked Plaintiff’s counsel whether a treating
 11 physician’s opinion would be procured for the record. (AR 46-47.) When counsel
 12 expressed doubt, the ALJ asked whether counsel had a problem with interrogatories
 13 being sent to a medical expert. (AR 47.) Counsel did not object. (AR 47-48.)⁶ On
 14 September 20, 2013, in response to the ALJ’s interrogatories, Harvey Alpern, M.D.,
 15 indicated that, with treatment, Plaintiff should not have edema or need to elevate his
 16 legs. (AR 595.) Plaintiff has not identified any contrary medical opinions.

17 Accordingly, the Court finds that this reason offered by the ALJ constitutes a
 18 clear and convincing reason that is supported by substantial evidence in the record.

19 Finally, the ALJ found that Plaintiff was “non-compliant with his treatment .
 20 . . by not taking his prescribed medication and not adhering to a diet and exercise
 21 program as advised by his doctors.” (AR 16; *see also Molina*, 674 F.3d at 1113 (a
 22 claimant’s failure to adhere to a course of treatment without justification can be a
 23 permissible reason to discount his credibility).) Plaintiff does not address the ALJ’s
 24 assertion about his failure to follow a diet and exercise program, but argues that he
 25 did not consistently take his medications because “for most of the relevant time he
 26

27 ⁶ Counsel did, however, clearly state his preference for a medical expert instead of a
 28 consultative examiner. (AR 47 (“ATTY: Well, an ME might be better than a CE.
 [¶] ALJ: Okay. [¶] ATTY: The CEs I, I really am suspect of.”).)

1 was without medical insurance or the medications had side effects which caused
2 [him] to stop taking the medications.” (Pl. Memo. at 8.)

3 Plaintiff’s second assertion is at odds with his hearing testimony:

4 Q Do you take any medications?

5 A Yes, I do.

6 Q All right. What are you taking?

7 A One is called -- for -- there’s, there’s two for my blood
8 pressure and one for the edema. The edema one it’s called Lasix and
9 the other ones for the blood pressure they’re called Losartan and
10 Metoprolol.

11 Q Do you have any side effects from these medications?

12 A No.

13 (AR 36-37.) Thus, the Court finds this assertion not tenable.

14 The Court also finds that Plaintiff’s first assertion is unpersuasive on this
15 record. To be sure, an ALJ may not “reject[] ... a claimant’s complaints for lack of
16 treatment when the record establishes that the claimant could not afford it.”
17 *Regennitter v. Comm’r of Soc. Sec. Admin.*, 166 F.3d 1294, 1297 (9th Cir. 1999)
18 (citing *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996)). Here, however, the
19 records Plaintiff cites do not establish an inability to obtain his medications. (*See*
20 AR 555, 608.) At least one record suggests Plaintiff had not filled or picked up his
21 prescriptions. (*See* AR 555 (“Patient states that he ran out of lasix and has not been
22 able to get a refill for a week. ... Patient has not been able to pick up prescription
23 today.”).) Moreover, it appears as though Plaintiff was informed of or provided
24 community resources and financial assistance to eliminate or reduce the cost of his
25 treatment on a number of occasions. (*See* Def. Memo. at 7 (citing AR 338, 625,
26 827). *Cf.* SSR 96-7p (“The explanations provided by the individual [about why he
27 failed to continue a course of treatment] may provide insight into the individual’s
28 credibility. For example: [¶] ... The individual may be unable to afford treatment
and may not have access to free or low-cost medical services.”) (emphasis added).)

1 The record further suggests that Plaintiff may have gotten medication during trips
2 to Mexico. (*See* AR 625.)

3 In sum, the Court finds that the ALJ's credibility determination was clear and
4 convincing and supported by substantial evidence, and therefore must be upheld.

5 **B. The ALJ's Step Five Finding Is Not Supported by Substantial**
6 **Evidence**

7 Plaintiff further argues that the ALJ failed to properly develop the record and
8 analyze his ability to perform the jobs the vocational expert identified at step five of
9 the sequential evaluation process "given his combination of impairments ... [and]
10 marginal education in Mexico." (*See* Pl. Memo. at 9.) The Commissioner argues
11 that Plaintiff waived this argument by not asking the vocational expert at the
12 hearing "whether [his] educational history prevented him from performing" the
13 three occupations the vocational expert identified as occupations Plaintiff would be
14 able to perform: addresser (Dictionary of Occupational Titles ("DICOT") 209.587-
15 101), lens inserter (DICOT 713.687-026), and parimutuel-ticket checker (DICOT
16 219.587-010). (*See* Def. Memo. at 8.) However, the Court is not persuaded by the
17 Commissioner's argument, because it is she who must show that the claimant can
18 perform other work in light of his RFC, age, work experience, and *education level*.
19 *See* *Silveira v. Apfel*, 204 F.3d 1257, 1261-62, n.14 (9th Cir. 2000). Accordingly,
20 the Court proceeds to address the merits of Plaintiff's claim.

21 The Commissioner is allowed by regulation to utilize a claimant's numerical
22 grade level as a factor in evaluating his "ability to meet vocational requirements, for
23 example, reasoning ability, communication skills, and arithmetical ability." *See* 20
24 C.F.R. § 416.964(a). Here, therefore, based largely on Plaintiff's completion of the
25 sixth grade in Mexico, the ALJ, with the vocational expert's assistance, determined
26 that Plaintiff had a "marginal" education, *i.e.*, the "ability in reasoning, arithmetic,
27 and language skills which are needed to do simple, unskilled types of jobs." *See* 20
28 C.F.R. § 416.964(b)(2) ("marginal education" is considered to be "formal schooling

1 at a 6th grade level or less”). And as Respondent notes, each of the jobs selected by
 2 the vocational expert is simple and unskilled, with a specific vocational preparation
 3 of 2. (*See* AR 43-44; *see also* SSR 00-4p, 2000 WL 1898704, at *3 (“[U]nskilled
 4 work corresponds to an SVP of 1-2[.]”).)

5 However, a completed numerical grade level does not irrefutably establish a
 6 person’s ability to meet vocational requirements if there is contradictory evidence
 7 as to one or more of the sub-factors (*i.e.*, reasoning ability, communication skills,
 8 and arithmetical ability). *See Hernandez v. Colvin*, 2015 WL 1250176, at *6 (E.D.
 9 Cal. Mar. 18, 2015) (citing 20 C.F.R. §§ 404.1564(b), 416.964(b); *Skinner v. Sec’y*
 10 *of Health & Human Servs.*, 902 F.2d 447, 451 (6th Cir. 1990)); *see also Boone v.*
 11 *Sec’y of Health & Human Servs.*, 595 F. Supp. 758, 759 (E.D. Mich. 1984) (a grade
 12 level completed in school may not represent a person’s actual educational abilities).

13 Here, Plaintiff contends that he does not possess the communication skills
 14 required to perform the “addresser” occupation. (*See* Pl. Memo. at 9-10 (“Plaintiff
 15 maintains that his marginal education in Mexico would not allow him to
 16 successfully perform the occupation of addresser due to the GED language skill
 17 requirements of that occupation which far exceed Plaintiff’s abilities.”).)

18 All jobs listed in the DICOT have general education development (“GED”)
 19 levels—defined as “aspects of education (formal and informal) which are required
 20 of the worker for satisfactory job performance.” *Dictionary of Occupational Titles*,
 21 Appendix C—Components of the Definition Trailer, 1991 WL 688702 (4th ed.
 22 1991). A job’s GED level pertains to, among other things, the reading, writing, and
 23 speaking development level necessary to properly perform that job, ranging from 1
 24 (the lowest level) to 5 (the highest level). *Id.* In terms of language skills, addresser
 25 is listed as GED level two, which has the following requirements:

26 READING: Passive vocabulary of 5,000-6,000 words. Read at a rate
 27 of 190-215 words per minute. Read adventure stories and comic
 28 books, looking up unfamiliar words in dictionary for meaning,

1 spelling, and pronunciation. Read instructions for assembling model
2 cars and airplanes.

3 WRITING: Write compound and complex sentences, using cursive
4 style, proper end punctuation, and employing adjectives and adverbs.

5 SPEAKING: Speak clearly and distinctly with appropriate pauses and
6 emphasis, correct pronunciation, variations in word order, using
7 present, perfect, and future tenses.

8 (DICOT 209.587-101.)

9 While Plaintiff testified at the administrative hearing without the assistance
10 of an interpreter, in a 2012 Disability Report, Plaintiff said he could not speak and
11 understand English. (AR 175.)⁷ Further, when asked at the hearing whether he
12 could read and write in English, Plaintiff responded: “Most of it, yeah. It’s -- I can
13 get -- a little bit complicated (INAUDIBLE), but most of it yeah.” (AR 41.)

14 On this record, the Court finds the evidence ambiguous or mixed both as to
15 Plaintiff’s English language skills and the effect of the combination of his language
16 skills and education level on his ability to perform the addresser position identified
17 by the ALJ. *See Mayes*, 276 F.3d at 459-60 (an ALJ must develop the record
18 further when there is ambiguous evidence or when the record is inadequate to allow
19 for proper evaluation of the evidence). Similarly, the Court finds the record is
20 insufficiently developed to determine whether Plaintiff has the reasoning,
21 mathematical and language skills to allow him to perform work as a lens inserter or
22 parimutel-ticket checker. While the lens insert position may be equally or less
23 stringent than the requirements for addressers, the requirements for a parimutel-
24 ticket checker appears to have more stringent reasoning, mathematical, and
25 language skills requirements. *Compare* Addresser: DICOT 209.587-101

26 ⁷ The Court acknowledges that Plaintiff also stated in the Report that he could read
27 and understand English and could write more than his name in English. (AR 175.)
28 However, the Court assigns these statements less weight given the other evidence
discussed herein which contradicts it.

1 (Reasoning Skills (GED-R-2), Mathematical Skills (GED-M-1), and Language
2 Skills (GED-L-2)), *with* Lens Inserter: DICOT 713.687-026 (Reasoning Skills
3 (GED-R-1), Mathematical Skills (GED-M-1), and Language Skills (GED-L-1) *with*
4 Parimutel-Ticket Checker: DICOT 219.587-010 (level three reasoning,
5 mathematical, and language skills).

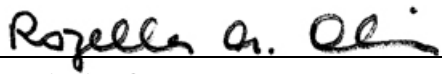
6 For the foregoing reasons, the Court concludes that remand is appropriate to
7 allow the ALJ to further develop the record regarding Plaintiff's educational, as
8 well as English language skills, and evaluate whether Plaintiff can perform the jobs
9 identified by the VE.

10 **V. CONCLUSION**

11 IT IS ORDERED that Judgment shall be entered REVERSING the decision
12 of the Commissioner denying benefits, and REMANDING the matter for further
13 proceedings consistent with this Order.

14 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
15 Order and the Judgment on counsel for both parties.

16
17 DATED: April 29, 2016



ROZELLA A. OLIVER
UNITED STATES MAGISTRATE JUDGE

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21 **NOTICE**

22 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,**
23 **LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**